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# State v. Roark Respondent's Brief Dckt. 43166

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LAWRENCE G. WASDEN  
Attorney General  
State of Idaho  
P.O. Box 83720  
Boise, Idaho 83720-0010  
(208) 334-4534

PAUL R. PANTHER  
Deputy Attorney General  
Chief, Criminal Law Division

LORI A. FLEMING  
Deputy Attorney General

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 43166
Plaintiff-Respondent,	)	
	)	Washington County Case No.
v.	)	CR-2014-5610
	)	
GEORGE ORVAL ROARK,	)	
	)	RESPONDENT'S BRIEF
Defendant-Appellant.	)	
_____	)	

Issue

Has Roark failed to establish that the district court abused its discretion by imposing a unified sentence of 10 years, with three years fixed, upon the jury's verdict finding him guilty of felony DUI?

Roark Has Failed To Establish That The District Court Abused Its Sentencing Discretion

A jury found Roark guilty of felony DUI (prior felony DUI conviction within 15 years) and the district court imposed a unified sentence of 10 years, with three years fixed. (R., pp.64-65, 84-85.) Roark filed a notice of appeal timely from the judgment of conviction. (R., pp.92-95.)

Roark asserts his sentence is excessive in light of his claim that “treatment programs based in an Anglo way of thinking may not be effective in addressing” Roark’s alcohol abuse “in the same way a program from the Native American perspective would.” (Appellant’s brief, pp.4-6.) The record supports the sentence imposed.

Appellate courts review a criminal sentence under an abuse of discretion standard. State v. Calley, 140 Idaho 663, 665-666, 99 P.3d 616, 618-619 (2004). Sentences fixed within the statutory limits will ordinarily not be considered an abuse of discretion. State v. Sheahan, 139 Idaho 267, 284, 77 P.3d 956, 973 (2003). When a sentence is challenged as being excessively harsh, appellate courts independently review the record on appeal, having due regard for the nature of the offense, the character of the offender, and the protection of the public interest. Calley, 140 Idaho at 666, 99 P.3d at 619. In order to prevail, a defendant must demonstrate that the sentence “in light of the governing criteria, is excessive under any reasonable view of the facts.” Id. Sentences are reasonable if “it appears at the time of sentencing that confinement is necessary ‘to accomplish the primary objective of protecting society and to achieve any or all of the related goals of deterrence, rehabilitation or retribution applicable to a given case.’” Sheahan, 139 Idaho at 284, 77 P.3d at 973. A sentence need not serve all sentencing goals; one may be sufficient. Id. at 285, 77 P.3d at 974 (citing State v. Waddell, 119 Idaho 238, 241, 804 P.2d 1369, 1372 (Ct. App.1991)). However, as a matter of policy in Idaho, the primary consideration in sentencing is the good order and protection of society, and all other factors are subservient to that end. State v. Hunnel, 125 Idaho 623, 627, 873 P.2d 877, 881 (1994) (citing State v. Moore, 78 Idaho 359, 363, 304 P.2d 1101, 1103 (1956)).

The maximum prison sentence for felony DUI (prior felony DUI conviction within 15 years) is 10 years. I.C. §§ 18-8005(6), -8005(9). The district court imposed a unified sentence of 10 years, with three years fixed, which falls well within the statutory guidelines. (R., pp.84-85.) At sentencing, the district court articulated the correct legal standards applicable to its decision and also set forth in detail its reasons for imposing Roark's sentence. (3/2/15 Tr., p.185, L.10 – p.187, L.2.) The state submits that Roark has failed to establish an abuse of discretion, for reasons more fully set forth in the attached excerpt of the sentencing hearing transcript, which the state adopts as its argument on appeal. (Appendix A.)

#### Conclusion

The state respectfully requests this Court to affirm Roark's conviction and sentence.

DATED this 17th day of December, 2015.

/s/ \_\_\_\_\_  
LORI A. FLEMING  
Deputy Attorney General

VICTORIA RUTLEDGE  
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 17th day of December, 2015, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

BRIAN R. DICKSON  
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: [briefs@sapd.state.id.us](mailto:briefs@sapd.state.id.us).

\_\_\_\_\_/s/\_\_\_\_\_  
LORI A. FLEMING  
Deputy Attorney General

## APPENDIX A

1 dad passed.  
2 It's obvious I couldn't do it. So I started  
3 drinking. And here I am. You know, and I failed.  
4 Okay.  
5 THE COURT: Okay.  
6 All right. Any legal cause why judgment should  
7 not be pronounced?  
8 MR. DARRINGTON: None known to the defense.  
9 MR. WALKER: No, Your Honor.  
10 THE COURT: Driving under the influence in May  
11 of '86; driving under the influence in June of '87;  
12 driving under the influence in September of 1995; driving  
13 under the influence in June of 1996; driving under the  
14 influence in February of 1999; driving under the  
15 influence in September of 2003; and finally, felony in  
16 November of 2006; another felony when you were in  
17 possession of a weapon, September of 2011; and so many  
18 driving charges with a bad license that I didn't even  
19 write them all down, because they would have filled up an  
20 entire page. And then of course we are looking at the  
21 current felony driving under the influence.  
22 And it's obvious you have a problem with  
23 alcohol. And you know, there are a lot of people with  
24 problems with alcohol, but your problem is you get behind  
25 the wheel of a car, and that's when we are in danger.

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1 And so I have considered the factors in *State*  
2 *vs. Toohill*, deterrence of you, of others, possibility of  
3 rehabilitation, punishment, and protection of society.  
4 And protection of society is the big one as far as I'm  
5 concerned here.  
6 I've also considered the factors in Idaho Code  
7 19-2521 for imprisonment versus probation. I do find  
8 that you are a career criminal. And this is at least  
9 your ninth driving under the influence. At least  
10 everybody agrees with that.  
11 By my count it's at least the eighth. Third  
12 felony. Your disregard for the law in terms of your  
13 driving with a suspended license or invalid license is  
14 pretty obvious. The level of treatment that you require,  
15 at least the GAIN I recommends a Level III residential  
16 treatment. I don't know if that's beneficial for you or  
17 not, but it's at least a level that you are not going to  
18 get out in the community.  
19 So I don't find that probation is even a  
20 consideration, based upon your record and based upon your  
21 current level of impairment and addiction.  
22 So based upon the jury's finding of guilt on  
23 felony driving under the influence, I will impose  
24 sentence of three years fixed, followed by seven years  
25 indeterminate. I will give you credit for time served

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1 against that sentence and recommend placement in the  
2 therapeutic community. Order that you pay court costs,  
3 also \$1,000 fine. Reimburse Washington County the cost  
4 of the Public Defender in the amount of \$750. You will  
5 be required to give a DNA sample and right thumbprint  
6 impression to the Idaho State Police. I think they  
7 indicated you probably already have, but in any case, I  
8 will order that your driver's license be suspended for a  
9 period of five years absolute. And this will begin after  
10 you complete incarceration.

11 If the parole board grants you restricted  
12 privileges, you will be required to have a functioning  
13 ignition interlock device placed on any vehicle that you  
14 drive.

15 And I am going to advise you of your appellate  
16 rights. You have the right to appeal. Any notice would  
17 need to be filed within 42 days. You have the right to  
18 file one petition for reduction of sentence within 120  
19 days of the judgment of conviction.

20 You also have the right to file a petition for  
21 post-conviction relief within one year after the appeal  
22 time expires or after the termination of the appeal.

23 If you could not afford a lawyer, the Court  
24 would appoint one to represent you.

25 So if you would take a minute to look those

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1 over.  
2 So if you have any questions, you can ask  
3 Mr. Darrington. And sign that once you've read through  
4 those.  
5 All right. I will remand you, then, to the  
6 Department of Corrections.  
7 And good luck. I hope you can get this under  
8 control at some point.  
9 We are going to take a break.  
10 (Conclusion of proceedings.)  
11 -- o o --

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